

UNITED STATES OF AMERICA  
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
OFFICE OF ADMINISTRATIVE LAW JUDGES

In the Matter of:
FRANK JEFFREYS,  Respondent.

HUDALJ 02-2056-DB

**MEMORANDUM AND ORDER OF DISMISSAL**

This case arose from the appeal of a proposed debarment. The Debarring Official's Designee referred this case to the Office of Administrative Law Judges for findings of fact. At a March 21, 2003, prehearing telephone conference I orally granted two Government motions: 1) the Government's January 3, 2002, Motion to Deem Admitted Allegations Contained in Government's Amended Complaint; and, 2) the Government's Motion for Sanctions Based on Non Compliance. The granting of either motion requires the cessation of my role as fact finder and the remand of this case to the Debarring Official's Designee for disposition of this matter. Because I am remanding this case, I do not decide other pending motions.

By Notice dated February 13, 2002, the Government suspended Respondent and proposed his debarment. Respondent opposed the suspension, proposed debarment and requested a hearing. This letter generally denied the factual allegations without specifically responding to each allegation. On August 28, 2002, the Government filed a Motion for Leave of Court to Amend Complaint which I granted on September 16, 2002. On September 16, 2002, the Government filed an Amended Suspension and Debarment Notice.

On October 10, 2002, I issued a Second Amended Notice and Order setting forth new dates for the completion of discovery and for the hearing in this matter. That Order required that the parties complete all discovery on or before January 3, 2003, and that Respondent file any response to the Government's Amended Answer on or before November 15, 2002.

Respondent did not file an Amended Answer on or before November 15, 2002. On January 3, 2003, the Government filed a Motion to Deem Admitted Allegations Contained in Government's Amended Complaint. This Motion quotes a HUD regulation requiring that an answer respond specifically to each factual allegation. If not specifically

denied, allegations are deemed admitted. *See* 24 C.F.R. § 26.11. Respondent belatedly filed an Amended Answer on February 10, 2003. The answer is in the form of a “general denial.” It does not respond to the allegations specifically set forth in the Government’s Amended Complaint.

On December 3, 2002, the Government filed a Motion to Compel Respondent to Provide Responses to Government’s Discovery Requests. On December 10, 2002, I issued yet another Order requiring Respondent *inter alia* to respond to the Government’s discovery requests on or before January 17, 2003. On January 21, 2003, the Government filed a formal notification that Respondent had failed to respond to the Government’s discovery request. On February 5, 2003, the Government moved that I impose a sanction for this failure, the sanction being a dismissal for failure to prosecute this debarment appeal.<sup>1</sup> To date, Respondent failed to comply with the December 10, 2002, Order requiring a response to the Governments discovery requests on or before January 17, 2003.

On March 21, 2003, I held a prehearing telephone conference. Respondent’s counsel admitted that he had not responded to the Government’s request for discovery. He contended that it was a wasted effort since the Government had most of requested materials; that the Government had not responded to Respondent’s discovery request<sup>2</sup>; and, that this matter should be referred for settlement. He also stated that he believed that his general denial of the allegations in the Amended Complaint was sufficient under the Federal Rules of Civil Procedure. Concluding that Respondent provided insufficient justification for its failure to comply with my orders and the applicable HUD regulation, I orally granted the two Government’s Motions.

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<sup>1</sup>The Government’s Motion for Sanctions does not specify the Sanction. At a March 21, 2003, prehearing conference call Counsel for the Government requested that the sanction be dismissal for lack of prosecution.

<sup>2</sup> Unlike Respondent, the Government did not fail to comply with an order to respond to a discovery request by a date certain.

Accordingly, it is ORDERED that

1) The Government's January 3, 2002, Motion to Deem Admitted Allegations Contained in Government's Amended Complaint is *granted*;

2) The Government's Motion for Sanctions Based on Non Compliance is *granted*;  
and,

3) This case is *remanded* to the Deciding Official's Designee for disposition.

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WILLIAM C. CREGAR,  
Administrative Law Judge



## **CERTIFICATE OF SERVICE**

I hereby certify that copies of this ORDER issued by WILLIAM C. CREGAR, Administrative Law Judge, HUDALJ 02-2056-DB, were sent to the following parties on this 26th day of March, 2003, in the manner indicated:

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Chief Docket Clerk

### **REGULAR MAIL:**

James O. Okorafor, Esq.  
Okorafor & Mgbarano  
2616 S. Loop West, Suite 502  
Houston, TX 77054

Frank Jeffries  
c/o Capitol State Mortgage Corporation  
2646 South Loop West #10  
Houston, TX 77054

### **INTEROFFICE MESSENGER:**

Tiffannie Smith, Esq.  
Ana Fabregas, Esq.  
Departmental Enforcement Center  
U.S. Department of Housing and Urban Development  
1250 Maryland Avenue, S.W., Room 200, Portals Bldg.  
Washington, DC 20024

Tammie M. Parshall, Docket Clerk  
Departmental Enforcement Center  
U.S. Department of Housing and Urban Development  
1250 Maryland Avenue, S.W., Room 200, Portals Bldg.  
Washington, DC 20024